

SUMMARY

A Review of the Public Service Commission

INTRODUCTION

Members of the General Assembly requested the LAC to conduct an audit of the Public Service Commission (PSC). The review focused on whether PSC was following the due process requirements in cases before the commission. We were also asked to examine the issues of commissioner qualifications and agency structure.

In 1910, the General Assembly established a Public Service Commission authorizing it to "...fix and establish in all cities of the State rates and charges for the supply of water, gas or electricity furnished by any person, firm or corporation to such cities, the inhabitants thereof, and to prescribe penalties." The commission regulates electric, natural gas, telecommunications, water/wastewater and transportation companies.

The Public Service Commission consists of 79 employees. The agency is funded through an assessment on the utilities it regulates. In FY 01-02 the commission held 117 hearings, had 47 commission meetings, and issued 905 orders.

February 2003



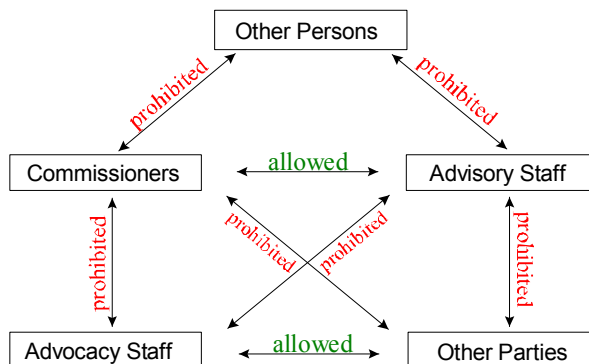
DUE PROCESS

We found no evidence that PSC has not complied with most of the due process requirements of the Administrative Procedures Act. However, we found 17 e-mails which may have violated the prohibition on ex parte communications. Ex parte is defined by Black's Law Dictionary as "On one side only." Ex parte occurs when one party communicates information with a decision-maker, such as a PSC Commissioner, to the exclusion of other parties. These communications may undermine the integrity of the administrative process and the decisions of the Public Service Commission. In addition, we found that the PSC has no procedures in place for training staff regarding ex parte communications or for reporting potential ex parte communications.

We also found several e-mails documenting meetings which occurred between parties' representatives and PSC Commissioners when cases were pending before the PSC. Although it is impossible to determine what topics were discussed, these meetings give the appearance of impropriety. Furthermore, there were several e-mails documenting meetings which occurred between parties' representatives and PSC Commissioners and staff immediately prior to filing cases with the PSC. Since the case had not yet been filed when the meetings occurred, there is no contested case and therefore these discussions are not ex parte communications. However, PSC officials stated that if these meetings had taken place after the case was filed, they would be prohibited by the ex parte statute.

Communications that would otherwise be prohibited would be allowed if all parties are notified

Communications Allowed or Prohibited During Contested Cases



and given an opportunity to participate.

PSC commissioners are not subject to South Carolina's code of judicial conduct. Binding Public Service Commissioners and their assistants to a code of conduct will provide more guidance on what types of activities are prohibited, and a method to prosecute those engaging in inappropriate or unlawful activities. Also, South Carolina's Administrative Procedures Act does not include model language which would require commissioners to disclose the communication and allow parties an opportunity to respond.

AGENCY STRUCTURE

AUDITS BY THE LEGISLATIVE AUDIT COUNCIL CONFORM TO GENERALLY ACCEPTED GOVERNMENT AUDITING STANDARDS AS SET FORTH BY THE COMPTROLLER GENERAL OF THE UNITED STATES.

FOR MORE INFORMATION

Our full report, including comments from the PSC, and this document are published on the Internet at

www.state.sc.us/sclac

LEGISLATIVE AUDIT COUNCIL
1331 Elmwood Ave., Suite 315
Columbia, SC 29201
(803) 253-7612

George L. Schroeder
Director

We found there is a need for a separate staff for commissioners in order to provide them with sufficient expertise and to address concerns about potential ex parte communications. The commissioners at PSC do not have a staff permanently assigned to advise them. Instead, each case to be decided by the commission is assigned a technical and a legal advisor. We contacted seven southeastern states (Alabama, Florida, Georgia, Mississippi, North Carolina, Tennessee, and Virginia). We found that most states have a separate staff for commissioners.

We also reviewed agency structure in other states. We found that either a separate or a combined agency can be effective and there are advantages and disadvantages to each. We identified two states, North Carolina and Mississippi, that have separated their PSC into two agencies. While separating the agency could help address concerns about ex parte communications, it is important that any separation be done without denying commissioners the staff expertise they need to make informed decisions.

QUALIFICATIONS

There are no minimum education and experience requirements to become a PSC Commissioner. Most southeastern states also do not have minimum education and experience requirements for their commissioners. However, we found that twenty-seven (90%) of thirty commissioners currently serving in seven other southeastern states have at least a college degree. Currently, two of the seven commissioners in South Carolina have high school diplomas while five have college or graduate degrees.

In addition, PSC commissioners are currently elected to four-year terms which are not staggered. Five (71%) of the seven southeastern states have staggered terms for their commissioners. Also, there are staggered terms for commissioners of the South Carolina Workers' Compensation Commission and for South Carolina Administrative Law Judges.

South Carolina and Virginia are the only two southeastern states in which their PSC commissioners are elected by the Legislature. In other states, commissioners are either elected by the citizens of the state in a statewide election or appointed by the governor and in some cases, confirmed by the Legislature.

Section 58-3-24 of the S.C. Code of Laws provides that no member of the General Assembly may be elected to the PSC while serving in the General Assembly or for a period of four years after ceasing to be a member of the General Assembly. When legislators or their relatives are allowed to run for PSC commissioner before the body in which they or their relatives have served, it may result in an inequitable advantage.

The Public Service Commission is responsible for deciding increasingly complex issues. When commissioners are elected that do not meet minimum requirements, there is less assurance that complex decisions are made effectively. Also, when commission terms are concurrent and all commissioners are replaced every four years, invaluable experience may be lost in one election cycle.